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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,981	04/17/2006	Vincent Jemelin	19724	8604
272 7590 01/26/2009 SCULLY, SCOTT, MURPHY & PRESSER, P.C. 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 01/26/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,981

Applicant(s)

JEMELIN, VINCENT

Examiner

WALTER B. AUGHENBAUGH

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 11, 14 and 18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 10, 11, 14 and 18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Acknowledgement of Applicant's Amendments

1. Applicant's amendments made in claims 10, 11, 14 and 18 in the Amendment filed October 8, 2008 have been received and considered by Examiner.
2. Applicant's amendments made in the abstract in the Amendment filed October 8, 2008 have been received and considered by Examiner.

WITHDRAWN OBJECTION

3. The objection to the abstract made of record in the previous Office Action mailed April 8, 2008 has been withdrawn due to Applicant's amendments in the abstract in the Amendment filed October 8, 2008.

WITHDRAWN REJECTIONS

4. All art rejections of the claims made of record in the previous Office Action mailed April 8, 2008 have been withdrawn due to Applicant's amendments in the claims in the Amendment filed October 8, 2008.

NEW REJECTIONS

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

6. Claims 10, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berghahn (USPN 3,757,979) in view of Sudo et al. (USPN 5,853,833).

Berghahn teach a safety closure-bottle assembly for medicine that comprises a capsule (bottle 5 of Berghahn) and a cap (safety closure 3 of Berghahn) (see, for example, Fig. 1 and col.

1, lines 3-8). Berghahn teach that the cap is formed of low density polyethylene (col. 6, lines 20-30). The recitation “for holding a dental implant with a fluid material preserving the dental implant” is an intended use phrase that has not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987).

Berghahn fails to teach that the capsule is formed exclusively of cyclic olefin copolymer with an impermeability to moisture of less than 5% fluid loss per year.

Sudo et al. (USPN 5,853,833), however, disclose a sanitary container for medicine (see, for example, col. 6, lines 32-34 and col. 1, lines 5-15) formed exclusively of cyclic olefin copolymer (see, for example, col. 3, lines 40-49), and that the cyclic olefin copolymer enables the contents of the container to be stably and sanitarily stored (col. 1, lines 5-15 and col. 2, lines 51-58). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the bottle 5 of Berghahn exclusively out of the cyclic olefin copolymer disclosed by Sudo et al. since cyclic olefin copolymer is known to be a polymeric material for containers of medical products that enables the contents of the container to be stably and sanitarily stored as taught by Sudo et al.

In regard to the recitation that the cyclic olefin copolymer has an impermeability to moisture of less than 5% fluid loss per year, the container taught by Berghahn and Sudo et al. has meets the limitation regarding the maximum fluid loss per year because Berghahn and Sudo et al. teach all of the claimed structural and compositional limitations.

In regard to claims 11 and 14, Berghahn and Sudo et al. teach the package as discussed above in regard to claim 10.

Berghahn fails to explicitly teach that the package includes a barrier sealing the capsule (in regard to claim 11) and that the capsule is coated with silicon oxide (in regard to claim 14).

Sudo et al. (USPN 5,853,833), however, disclose that the sanitary container may include a silicon oxide coating applied to the surface of the cyclic olefin container (see, for example, col. 9, lines 10-17) that improves the transmission resistance to oxygen and nitrogen of the cyclic olefin container (see, for example, col. 3, lines 5-19). This silicon oxide coating corresponds to the barrier sealing the capsule claimed in claim 11.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have coated the capsule of the package taught by Berghahn and Sudo et al. with the silicon oxide coating of Sudo et al. in order to improve the transmission resistance to oxygen and nitrogen of the cyclic olefin container of Sudo as taught by Sudo et al.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berghahn (USPN 3,757,979) in view of Sudo et al. (USPN 5,853,833) and in further view of Sudo (USPN 5,723,189).

Berghahn and Sudo et al. teach the package as discussed above in regard to claim 10.

Berghahn and Sudo et al. fail to explicitly teach an ampoule within the capsule, where the ampoule is formed of cyclic olefin copolymer.

Sudo (USPN 5,723,189), however, discloses that it is well known in the art that ampoules containing liquid medicament are enclosed in a container (col. 1, lines 64-66) in order to

maintain the sanitary nature of the medicament during storage of the medicament in a container (col. 1, lines 9-17) and that the cyclic olefin copolymer is suitable for use as any of a multiplicity of containers such as cases, sacks, vials, press through packs, slip pouches, partitioned vessels, ampoules "and the like" (col. 12, lines 28-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have stored ampoules in the capsule taught by Berghahn and Sudo et al. since it is well known in the art that ampoules containing liquid medicament are enclosed in a container in order to maintain the sanitary nature of the medicament during storage of the medicament in a container as taught by Sudo, and to have used cyclic olefin copolymer as the material of the ampoules since cyclic olefin copolymer is a suitable material for use as the material of ampoule used to store medicament as taught by Sudo et al. '833 (and as also taught by Sudo '189).

Response to Arguments

8. Applicant's arguments presented in the Amendment filed October 8, 2008 in regard to the 35 U.S.C. 102 and 103 rejections made of record in the previous Office Action mailed April 8, 2008 are moot due to the withdrawal of these rejections due to Applicant's amendments made in the claims in the Amendment filed October 8, 2008.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /
Examiner, Art Unit 1794

01/018/09

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794